

# CONSTITUTIONAL COURT OF ECUADOR

CASE NO. 1149-19-JP

## AMICUS CURIAE

### THE RIGHTS OF THE PROTECTIVE FOREST THE CEDROS, THEIR RIVERS AND THE ECOSYSTEM



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## 1. PRELIMINARY ASPECTS

1.1 Carla Cárdenas, Sara Lorenzini, Andrea Folds, Vanessa Schaeffer, Constanza Prieto Figelist and Grant Wilson, all members of the non-governmental organization Earth Law Center, identified as it appears at the bottom of our signatures, hereby we allow ourselves to respectfully present the following *Amicus Curiae*, in support of the claims of the protection action, presented by Harold Burbano, in his capacity as Tutelary Director of the Office of the Ombudsman and Others, before the Constitutional Court of Ecuador, identified as 1149-19-JP.

1.2 Earth Law Center a non-governmental organization, based in the United States of North America, that promotes the application of the rights of nature locally and internationally, creating alliances with local organizations for the recognition and promulgation of laws that recognize the rights inherent in rivers, oceans, and coastal and terrestrial ecosystems. Thus, it seeks to make a paradigm shift, fighting for the formal recognition of the rights of nature to exist, prosper and evolve. Earth Law Center seeks to grant ecosystems the same rights that people and corporations are recognized, allowing them to defend their rights before national and international courts, not only for the benefit of people but for nature itself.

1.3 The Global Alliance for the Rights of Nature (GARN) is a dynamic and diverse global network of organizations, communities and individuals committed to the universal adoption and implementation of legal systems that recognize, respect and enforce the "Rights of Nature" and promoting the transformation of how human beings relate to Mother Earth. The members of GARN are a network of organizations, scientists, lawyers, economists, indigenous leaders, authors, spiritual leaders, politicians, actors, business leaders, housewives, students and activists from more than 100 countries, from six continents of America North and South, Africa, Europe, Asia and Australia, who seek to transform the human relationship with the planet. They offer a network of allies and experts and support for communities, governments and others who promote thinking based on land rights, community actions and legal systems. GRAN has played an important role in the growth of the global movement for the Rights of Nature by offering education, involvement, and legal support to develop the Jurisprudence of the Earth through very high-level International Courts of Rights of Nature.

1.4 The Center for Biological Diversity ("the Center") is a non-profit organization with more than 1.7 million members and constituencies. The Center is headquartered in the United States and has offices in the United States and Mexico. For two decades, the Center and its members have worked to ensure the protection of endangered species and their habitats under state, federal laws and international treaties due to the increasing number of threats to biodiversity, such as the global problems of climate change, destruction habitat and wildlife trade. The Center believes that the health and vigor of human societies and the integrity and wilderness of the natural environment are closely linked. The Center has also worked intensively to prevent destructive activities such as commercial mining in sensitive and important habitats.

1.5 International Rivers has been dedicated since 1985 to the protection of rivers and the defense of the rights of the communities that depend on them. We work to stop destructive projects on rivers and promote energy and water supply solutions for a sustainable planet. Rivers are vital to sustain all life on earth. We seek a world where healthy rivers and the rights of local communities are valued and protected. We envision a world where water and energy needs are met without degrading nature or increasing poverty, and where people have the right to participate in the decisions that affect their lives.

1.6 The Great Lakes environmental is a non-governmental organization based in Detroit, United States, which offers the community education, legal and legal support on environmental issues. In addition to providing a variety of legal, policy development and environmental services related to natural resources and energy that affect communities in and around Detroit, throughout Michigan and the Great Lakes region.

1.7 The organizations base their intervention, Friends of the Court, before the Constitutional Court of Ecuador, on Principle 10 of the Rio de Janeiro Declaration on Environment and Development of 1992, which guarantees effective access for citizens to judicial and administrative procedures. Likewise, in the Constitution of the Republic of Ecuador, articles 397 numeral 1 (consecration of the principle of access to justice), 71 (enforceability of the rights of nature), 426 (principle of constitutional supremacy), as well as articles 8.3 (effective protection of the right to live in a healthy environment), 8.4 (citizen participation) and 6 (access to information, participation and justice in environmental matters) of the Environmental Organic Code.

1.8 The organizations consider it necessary to show this most excellent Court that this case is emblematic not only for Ecuador, but also for the international community, which is progressively adhering to this innovative way of protecting the rights of nature. Ecuador, in this way, is being observed as an example and a pioneer in the matter. Ecuador can take the next step, through this judgment, demonstrating to the world that policies, decisions, projects, administrative acts must be carried out within the framework of respect for the rights of nature and international environmental law and international human rights law. humans.

1.9 The organizations file this Constitutional Court of Ecuador *amicus curiae* with their order to respectfully request that: a) The effective enforcement of the rights of nature be protected and guaranteed; b) a mechanism is recognized and established to guarantee and respect the fundamental rights of the Los Cedros Protective Forest, specifically the right to exist, maintain and regenerate its life cycles, structure and evolutionary processes; c) A mechanism is recognized and established to guarantee and respect the fundamental rights of the rivers of the Manduriacu River, the Verde River and the Los Cedros River, the Magdalena River to specifically their rights: (1) The right to flow, (2) The right to exercise its essential functions with the ecosystem, (3) The right to be free from all contamination, (4) The right to feed and be fed by its tributaries, (5) The right to native biodiversity, and (6) The right to restoration; d) The application of the precautionary principle is guaranteed when granting authorizations in protective forests; e) The right of citizens to be consulted is

guaranteed; and g) guardians and representatives of the Los Cedros Protective Forest and its respective rivers are named.

## 2. THE INTRINSIC VALUE OF LOS CEDROS PROTECTIVE FOREST

### I. IMPORTANCE OF FORESTS AS AN ECOSYSTEM THAT HOST OTHER SPECIES AND PROVIDE ENVIRONMENTAL SERVICES INCLUDING WATER

- 2.1 Forests in general are ecosystems of extreme importance due to the essential functions that they exercise with respect to other natural entities, as well as the benefits they generate for humanity. Los Cedros forest is a forest that has been classified as a primary forest.
- 2.2 A forest ecosystem is the "home" of several species of our biodiversity, they are the source of environmental services and need to be considered a structure of elements that houses others. In fact, a forest ecosystem is the basic ecological unit in a particular forest that exists as a "home" for a community of organisms classified both native and introduced. A forest ecosystem gets its name from the primary tree species that make up the canopy. It is defined by all the collective living inhabitants of that forest ecosystem that coexist together in symbiosis to create a unique ecology. The Los Cedros Protective Forest is home to several threatened species such as the Andean bear, the spider monkey and several species of birds.
- 2.3 The Constitution of Ecuador recognizes biodiversity as an element of strategic protection and obliges the state to manage it in accordance with the principles of sustainability, precaution, prevention and efficiency. This is stipulated in article 13 of the Constitution when it establishes:

“The State reserves the right to administer, regulate, control and manage strategic sectors, in accordance with the principles of environmental sustainability, precaution, prevention and efficiency.

The strategic sectors of decision and exclusive control of the State, are those that due to their importance and magnitude have decisive economic, social, political or environmental influence, and should be oriented to the full development of rights and social interest.

Strategic sectors are energy in all its forms, telecommunications, non-renewable natural resources, transportation and refining of hydrocarbons, biodiversity and

genetic heritage, the radioelectric spectrum, water, and others determined by law. "

2.4 Forests, therefore, are entities of strategic protection, deserving of protection in themselves, since they are the habitat par excellence of a huge variety of biodiversity, they harbor genetic heritage and are important for the regulation of the hydrological cycle and the provision of water. to the surrounding communities and to various river basins in the area. Forests provide various environmental services that are important to humans as well. This is recognized by the Forestry Law (prior to the Organic Code of the Environment) which states in its article 6 that the requirements for a declaration of a protective forest are:

- “a) Its main function is to conserve the soil and wildlife;
- b) Be located in areas that allow controlling torrential rain phenomena or the preservation of hydrographic basins, especially in areas with little rainfall;
- c) Occupy mountain ranges or areas contiguous to sources, streams or water reservoirs;
- d) Constitute windbreaks or curtains to protect the balance of the environment;
- e) Being in hydrological-forestry research areas;
- f) Be located in strategic areas for national defense; and,
- g) Constitute a factor for the defense of natural resources and infrastructure works of public interest ”.

2.5 The Los Cedros Protective Forest fulfills some of these ecological functions that are important for life, such as protecting and regulating hydrological cycles, preserving the hydrographic basin, and protecting the population from landslides due to being in a mountain brow. It protects biodiversity, the life of animals, flora and provides important environmental services to the surrounding population.

2.6 Protective forests, although they are not part of the National System of Protected Areas as indicated by the Ministry of the Environment, are a legally protected ecosystem that is also part of the Strategy to Protect the areas of the National System of Protected Areas. That is why the Los Cedros Protective Forest borders and is part of the buffer area of the Cotacachi Cayapas Ecological Reserve, which implies that this (and other protective forests) stops the threats that exist on the protected area. For example, Protective Forests reduce the possibility of invasions, fires and the entry of extractive activities and logging.

2.7 Likewise, the recognition of the rights of nature, as the Political Constitution of the Republic of Ecuador has done, recognizes the value in itself of all forests and other natural entities. This ecocentric model, of a constitutional nature and of a hierarchy superior to any other legislative norm, allows us to correct the gaps in our legal structures that allow myopic actors to abuse the world's natural systems to obtain a quick profit. Likewise, the Rights of Nature approach promotes the idea that humans, like everything else living on Earth, must respect Earth's systems.

- 2.8 Los Cedros Protective Forest is an excellent example of a sensitive, important and biodiversity-rich habitat that deserves maximum protection. In a letter dated August 2020 to the Ecuadorian government, some of the world's most prominent scientists, including Jane Goodall, EO Wilson, Peter Raven, and Rosemary and Peter Grant, along with more than 1,200 scientists from around the world, requested the cessation of mining activities in Los Cedros and other Protective Forests of Ecuador. The signatories noted that Los Cedros is home to 207 different species of plants and animals that are included in Ecuador's Red List, including 5 critically endangered, 29 endangered, 70 near-threatened, and 103 vulnerable to extinction. Look at annex 1 ]. These species include the brown-headed spider monkey (described below), the Andean bear, jaguar, oncilla, an incredible diversity of birds, rain frogs, and orchids found nowhere else on Earth [1]. The scientists expressed great concern about the impacts of mining on the exceptional biodiversity of the Protective Forests of Ecuador, and specifically requested that all mining concessions be removed from the Protective Forests, including Los Cedros. They also requested that Los Cedros be included in the Cotacachi-Cayapas Ecological Reserve, with which it shares a border.
- 2.9 Dr. Mika Peck, Senior Lecturer in Biology (Evolution, Behavior and Environment) at the University of Sussex, has presented evidence on the critically endangered brown-headed spider monkey that inhabits Los Cedros and the importance of the species for the ecosystem. See Annex [2]. This spider monkey has lost more than 80% of its original range and, in 2005, fewer than 250 brown-headed spider monkeys remained worldwide. As Dr. Peck explains, the brown-headed spider monkey is an "umbrella" species, an "indicator" species, and an "ecosystem engineer", as it maintains the incredible diversity of Los Cedros trees (probably more than 500 species trees can be found in Los Cedros) by seed dispersal. The monkey needs large areas of intact ancient forest to survive and is threatened by logging, illegal trade, hunting, climate change, and mining. This is just one of hundreds of unique and vulnerable species threatened by exploratory mining at Los Cedros.
- 2.10 David F. Díaz Fernández, KBA's Corregional Focal Point for Latin America and the Caribbean, has presented evidence on the status of Los Cedros Protected Forest as a global Key Biodiversity Area (ACB or KBA). See Annex [3]. Los Cedros has been recognized as a global CBA since 2015. This designation was based on the confirmation of Los Cedros as an Area of Importance for the Conservation of Birds and Biodiversity (IBA) by BirdLife International in 2005, based on the presence of populations of threatened bird species and bird species with restricted ranges. The status as a Key Area for Biodiversity extends beyond bird species, since it is known that Los Cedros is home to at least 54 endangered species worldwide and more than 140 species with restricted distribution areas according to the International Union for Conservation of Nature (IUCN). This includes 18 species of amphibians and plants, including 11 species of orchids that are only known from Los Cedros, that meet criterion A (globally threatened biodiversity) and criterion B (geographically restricted biodiversity) of the ACB standards. The importance of Los Cedros for the global persistence of biodiversity is clear.

## II. THE ROLE OF FORESTS IN THE MITIGATION OF CLIMATE CHANGE

2.11 The destruction of forests, on the other hand, releases about six billion tons of carbon dioxide into the atmosphere per year, and for the balance of this element, as well as for the conservation of the environment, it is important to prevent this from escaping. carbon stored in forest ecosystems, explains FAO [2]. Trees and forests help mitigate these changes by absorbing carbon dioxide from the atmosphere and converting it, through photosynthesis, into carbon that they "store" in the form of wood and vegetation. This process is called "carbon fixation."

2.12 The mitigation of the effects of climate change due to deforestation is an aspect included in the Constitution of the Republic of Ecuador when it orders the State to adopt measures to do so in Article 414, which establishes: "The State shall adopt adequate and cross-cutting measures to the mitigation of climate change, by limiting greenhouse gas emissions, deforestation and air pollution; will take measures for the conservation of forests and vegetation, and will protect the population at risk. "

2.13 In trees, carbon generally accounts for about 20 percent of their weight. In addition to trees, all forest biomass also functions as a "carbon sink". For example, organic matter in forest soil - such as humus produced by decomposition. The Reference Framework of Ecuador presented by Ecuador to the, United Nations Framework Convention on Climate Change [UNFCCC] states that:

"The area of native forests for 2014 was 12,753,387 hectares, of which the highest percentage, 74%, is in the Amazon region. These forests contain a considerable part of the country's mega-biodiversity and are the source of essential environmental goods and services for Good Living. They also play an important role in mitigating climate change by acting as sinks that absorb carbon from the atmosphere and store it in biomass and soils. In addition, forest ecosystems represent an intrinsic, cultural and spiritual value for the communities, peoples and nationalities of the country. In parallel, forests store carbon, which can be released by deforestation resulting in GHG emissions. Deforestation and forest degradation account for 10-20% of global GHG emissions (IPCC 2014). Deforestation in Ecuador entails a notable decrease in biodiversity, water reserves and environmental services; in addition to GHG emissions. Between 1990 and 2014, about 2.2 million hectares of natural forest were lost in the country. The native forest cover decreased from 14,587,771 hectares in 1990 to 12,753,387 hectares in 2014. The average gross annual deforestation in the period 1990-2000 was 129,943 hectares

per year. For the period 2000-2008 it was 108,650 hectares per year. And for the last period, 2008-2014, it was 97,917 hectares per year, which represents a downward trend in the gross deforestation rate. "

2.14 Additionally, we cite Ministerial Agreement No. 116 dated November 7, which sets important goals for the country and which must be met with the support of all institutions: [3]

§ Reduction of gross emissions of at least 20% by 2025, from the Reference Level of Forest Emissions from Deforestation 2000-2008.

§ By 2025, the policies, measures and actions of this plan will contribute to reducing the net rate of deforestation.

2.15 If mining continues to devastate forests, causing deforestation, these goals of the country will not be met and we will have finished with the most valuable source of environmental services and mitigation of greenhouse gases. The achievement of these goals depends on all the institutions of the country alienated in a single objective, to stop deforestation.

### **III. MINING IN THE FORESTS OF THE REPUBLIC OF ECUADOR**

2.16 Earth Law Center is concerned since the situation of the Los Cedros Protective Forest is not an isolated event in Ecuador. This is a forest problem throughout the country. In recent years, mining concessions have been awarded that overlap with Protective Forests, with Forests that are under the Socio Bosque program, with Forests in indigenous territories, due to the omission of the authorities of their not only constitutional obligation to guarantee the rights of the nature, but rather its international obligation to guarantee the right to a healthy environment.

2.17 Mining is the worst driver of deforestation and destroyer of forests. This fact has been alerted in scientific studies and several countries that suffer from the same situation. For example, in Peru mining is the main cause of deforestation, deforestation has tripled in the last five years. According to Ricardo Marapi in the article: "The deforestation of forests: an unstoppable process", states that deforestation in the Madre de Dios region: in 2008, the annual deforestation rate was just over 2,000 hectares, an amount that increased considerably to more than 6 thousand hectares in 2012 [4].

2.18 Mining, according to the Pacific Environmental Research Institute, which makes a global view of the situation, is the main cause of deforestation, destruction of water sources, contamination of rivers and water, migration and destruction of fauna, acculturation and loss of identity of the population. Oil, gas and mineral extraction accounts for approximately 7% of global deforestation in the subtropics, with increased exploration and development in the Amazon and Congo basins. In richer countries, the extractive



industries for oil, gas, coal and minerals continue to degrade and pose a threat to forests, such as in the Canadian boreal forest and the Russian taiga, where oil transportation infrastructure is being planned and developed. . Small-scale gold mining is responsible for 1/3 of the total mercury released to the environment, as mercury is used to separate gold from its minerals. Acid mine drainage methods and tailings deposits, which contain mine waste products such as sediment and minerals, present additional risks. The release of such wastes has disastrous consequences, as evidenced by the collapse of the Ok Tedi mine tailings dam in Papua New Guinea in 1984, which resulted in the deposition of high copper content waste in more than 10,000 ha. of forests. Forest extinction has spread beyond this immediate area over the course of 30 years, as mining waste continued to be discharged into the river system. This type of pollution can affect entire ecosystems, as metals are recycled over long periods [5].

2.19 In the same way, the Los Cedros Protected Forest is being affected, since the report of the Municipal GAD of Cotacachi and the Ministry of the Environment itself detail the destruction of the forest with the opening of "clearings", that is, forest clearing and the opening of trails.

2.20 Your Excellency, we respectfully say that this situation is the same as other protective forests in the country. In this case we see an opportunity for the Court to correct this error of the Ministry of the Environment. The error is in granting environmental records, which constitute the most lax category of environmental permits to a mining operation within a Protected Forest. On the contrary, the rights of the forest should be safeguarded and at least one environmental license should be required, which ensures that extractive activities will be in harmony with the rights of nature. Furthermore, the difference between a registration and a license is explained on the same website of the Ministry of the Environment, “[the] environmental registration is mandatory and is obtained immediately. It consists of entering information into the Single Environmental Information System (SUIA), which automatically validates certain data and generates the environmental authorization document, without requiring review, observation and approval processes by a technician from the institution. Being the project proponent, the person responsible for the information given to the environmental authority. Environmental licenses have their differentiated application for the social participation stage, being more agile for most cases and ensuring compliance with the Constitution of Ecuador. The standardization of forms and the optimization of stages reduce response times significantly .”

2.21 It is so easy to obtain an environmental record that just by entering information to a Unique Environmental Management System, SUIA, it is generated automatically and immediately. This leads us to understand that the SUIA computer system has an error because it is programmed to generate the most lax permit even when these projects are in Protective Forests. This puts all Protective Forests in the country at risk as it implies that all types of mining operations are being authorized to operate despite destroying forests, polluting water and damaging the homes of thousands of species.

2.22 The aforementioned is one more example of how the rights of nature are being affected by an administrative error. This contradicts the principle of direct application as stated in the Constitution in paragraph 3 of article 11 when it states that:

The exercise of rights shall be governed by the following principles:

3. The rights and guarantees established in the Constitution and in international human rights instruments shall be directly and immediately applicable by and before any public, administrative or judicial servant or servant, of office or at the request of a party.

For the exercise of constitutional rights and guarantees, conditions or requirements that are not established in the Constitution or the law will not be demanded.

The rights will be fully justiciable. A lack of legal norm may not be alleged to justify its violation or ignorance, to dismiss the action for those facts or to deny its recognition.

4. No legal norm may restrict the content of the rights or constitutional guarantees.

5. In matters of constitutional rights and guarantees, public, administrative or judicial servants must apply the norm and interpretation that most favor its effective validity [...]”.

### 3. THE RIGHTS OF NATURE

#### I. LIVING IN HARMONY WITH NATURE AND SUMAK KAWSAY, THE RIGHTS OF NATURE FROM THE JURISPRUDENCE OF THE EARTH

3.1. This case is of great importance, both for Ecuador and for the entire world, because it has the potential to establish an important and influential "Jurisprudence of the Earth" that will help guide humanity to be a beneficial presence rather than a destructive one within the community of life on the planet. Many peoples and communities hope that this Honorable Court will further develop this ecological approach to the law, or Jurisprudence of the Land, which is beginning to emerge in many countries around the world (detailed below).

3.2. The Jurisprudence of the Earth takes as a starting point that humans have come to exist within an ordered Universe that is itself the source of the most fundamental "laws" or principles. Humanity must respect these "laws of nature" in order to flourish as a species and remain members of the incredibly beautiful and complex community of life we call

"Earth." This means that the fundamental rights and duties in any constitution or law must be interpreted in such a way as to align human rules with the workings of nature to safeguard the conditions that make human life possible and satisfying. For example, the inviolability of human life referred to in article 66 (1) of the Constitution cannot be defended and protected without also protecting the conditions necessary for life to flourish. Consequently, we ask this Honorable Court to interpret and apply the relevant laws from the perspective of what is best for the community of life as a whole (including future generations).

- 3.3. This case is emblematic of the many difficult decisions humanity is now facing. It involves choosing between continuing to allow activities that destroy or damage nature but create jobs and generate taxes (for example, mining) or prioritize the protection and enhancement of living ecological systems that support life itself (such as the Los Cedros forest). Fortunately, the Constitution of the Republic of Ecuador is very clear as to the path to which the State and the people of Ecuador have committed themselves - it is about good living (*sumak kawsay*). As indicated in the Preamble to the Constitution, this implies the commitment to build "a new form of public coexistence, in diversity and in harmony with nature, to achieve good living, *sumak kawsay*."
- 3.4. The Constitution also makes clear, firstly, that good living should be pursued by living in harmony with nature (as opposed to the expense of nature) and secondly, that the recognition and fulfillment of the rights of nature (as established in articles 71 to 74 of the Constitution) is the most important legal mechanism to promote harmony with Nature.
- 3.5. The following provisions of the Constitution specify what is required to achieve this way of living well:

Article 275 states:

"Good living will require that people, communities, peoples and nationalities effectively exercise their rights and fulfill their responsibilities within the framework of interculturality, respect for their diversity and harmonious coexistence with nature."

Likewise, article 14 establishes:

"The right of the population to live in a healthy and ecologically balanced environment is recognized, which guarantees sustainability and good living (*sumak kawsay*). Environmental conservation, the protection of ecosystems, biodiversity and the integrity of the country's genetic assets, the prevention of environmental damage and the recovery of degraded natural spaces are matters declared of public interest."

Article 83:

“Ecuadorians have the following duties and obligations, without prejudice to the others provided by the Constitution or the law [...]

Respect the rights of nature, preserve a healthy environment and use natural resources in a rational, sustainable way and durable.

Promote public welfare and privilege general interests over individual ones, in coherence with good living. ”

Article 250:

“The territory of the Amazonian provinces is part of an ecosystem that is necessary for the environmental balance of the planet. This territory will constitute a special district, for which there will be comprehensive planning embodied in a law that includes social, economic, environmental and cultural aspects, together with a territorial ordering and planning that ensures the conservation and protection of its ecosystems, and the principle of *sumak kawsay*. ”

Article 277:

“The general duties of the State to achieve good living will be:

1. Guarantee the rights of people, communities and nature.

Article 283:

“The economic system is socially oriented and mutually supportive; it recognizes the human being as subject and end; tends to a dynamic and balanced relationship between society, State and market, in harmony with nature; and its objective is to ensure the production and reproduction of the material and immaterial conditions that can promote good living. ”

Article 319:

“The State will promote forms of production that ensure the good living of the population and will discourage those that violate their rights or those of nature; will promote a production that satisfies domestic demand and ensures the active participation of Ecuador in the global economy. ”

- 3.6. The evidence that many experts present before this Honorable Court will demonstrate that the Los Cedros Protective Forest is an outstanding example of an extremely diverse community of life, connected by millions of highly complex interrelationships that have taken many millions of years to evolve. The Forest itself is like a complex organism that supports many endangered species in addition to contributing to the overall health of all, for example, as a source of fresh water and oxygen. The evidence also establishes that if mining is allowed to continue, it will damage the forest's ability to

maintain and regenerate its life cycles; its structure, functioning, and evolutionary processes; and it is likely to lead to the extinction of species, the destruction of ecosystems, and the permanent alteration of natural cycles.

3.7. This means that mining will violate the rights of Nature enshrined in Article 71, that the State must apply preventive and restrictive measures to avoid the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles (Article 73) and that the forest has the right to be restored after any damage already incurred, in accordance with Article 72 (if possible).

3.8. We respectfully hold that the proposed mining is illegal and should be prohibited on the grounds that it violates the rights of Bosque Protector Los Cedros as an ecosystem, as well as the rights of the many members of that living community. Allowing mining to continue would also be contrary to the national objective of achieving good living (sumak kawsay) and, consequently, would violate the Constitution of the Republic of Ecuador. It would also be a violation of the fundamental and non-negotiable principles of Nature that humanity must respect in order to live in harmony and flourish.

**II. LOS CEDROS PROTECTIVE FOREST IS A LIVING ENTITY  
SUBJECT TO RIGHTS AND YOUR RIGHTS MUST BE  
GUARANTEED**

3.9. In 2008 the new Political Constitution of the Republic of Ecuador introduced the rights to nature in its articles 71, 72, 73 and 74, recognizing that nature has the right to exist, to maintain it, regenerate its life cycles, structure, functions, evolutionary processes and their restoration.

3.10. Likewise, article 14 of the Constitution establishes the right to live in a healthy environment and the public interest in preserving the environment:

“The right of the population to live in a healthy and ecologically balanced environment is recognized, which guarantees sustainability and good living, sumak kawsay. The preservation of the environment, the conservation of ecosystems, biodiversity and the integrity of the genetic heritage are declared of public interest. ”

3.11. Recognizing nature as a subject of rights shows an evolution in law, which seeks to position nature in the same rights regime as human beings. This implies that no one can appropriate, abuse, interfere or disrespect the rights of those who hold them, so that nature in Ecuador today has an equal privileged status as all Ecuadorian citizens and human beings. Giving nature rights is the most effective strategy to fight the climate crisis and break the current development model that prioritizes monetary gains over good living. Nature provides human beings with food, materials to produce, water and stabilizes the climates of our planet, therefore, giving rights to nature guarantees the very life of terrestrial ecosystems, in which human beings live.

- 3.12. The constitutional development of Ecuador has been supported by the Inter-American Court of Human Rights through the development of jurisprudence regarding the protection of the right to a healthy environment as an autonomous right, through the joint interpretation of Article 26 of the American Convention on Human Rights (ACHR)<sup>[6]</sup> in relation to article 11 of the Protocol of San Salvador<sup>[7]</sup> (PSS). Both international instruments have been ratified and adopted by the Republic of Ecuador and are an integral part of the current national legislation.
- 3.13. The Inter-American Court of Human Rights in Advisory Opinion Oc-23/17 of November 15, 2017 in paragraph 62 has stated: “This Court considers it important to highlight that the right to a healthy environment as an autonomous right, unlike other rights, protects the components of the environment, such as forests, rivers, seas and others, as legal interests in themselves, even in the absence of certainty or evidence about the risk to individual persons. It is about protecting nature and the environment not only because of its connection with a utility for the human being or because of the effects that its degradation could cause on other people's rights, such as health, life or personal integrity, but also for its importance for the other living organisms with whom the planet is shared, also deserving of protection in themselves. In this sense, the Court notices a tendency to recognize legal personality and, therefore, rights to nature not only in judicial decisions but even in constitutional orders. ”[8]
- 3.14. On this occasion, Earth Law Center is respectfully requesting this Court to reestablish the rule of law and guarantee the rights of the Los Cedros Protective Forest as they are being violated by mining activity.
- 3.15. The Los Cedros Protective Forest is being threatened in its existence, life cycles and evolutionary processes, as determined by the report of the Provincial Directorate of the Environment of Imbabura, Environmental Quality Unit and Natural Heritage Unit, in its Technical Report No. 0025-UCA -DPAI- MAE-O when it evidenced: “the clearing of native vegetation, affecting saplings (plants from 30cm to 1.5m in height) and latizales (individuals from 2.5 to 9.9 cm in diameter at the height of the dbh chest) of said vegetation and species known in the area as blood of hen, guarumo, cinnamon, zancona, among others. It was also verified the creation of gaps greater than .5m wide, the opening of a trunk approximately 1.5km in distance; and at the end of this, an area of approximately 100m<sup>2</sup> was observed where vegetation cut has been made, affecting saplings, latizales and trees with dbh equal to or greater than 10 cm. b. Additionally, the footprints of a spectacled bear and fresh feces were found within the trail that was created, a species that is in a state of vulnerability within the Andean forest ecosystem. And it concluded by determining that vegetation cover removal activities were effectively carried out to open a path of approximately 1.5km in distance where its width in some cases is greater than 1.50m, also evidenced the completion of a clearing of approximately 100, 00m<sup>2</sup>. Given this situation, we want to draw the Court's attention to three important elements of analysis regarding the law of forests: 1) it is necessary to respect the rights of forests as they are the “home” of thousands of other species of flora and fauna and important environmental services; 2) It is important for the mitigation of the negative effects of global warming and therefore forests are important for the country and for humanity; 3) this case is not isolated, it shows

what is happening with mining and its negative influence on the extermination of forests throughout the country.

- 3.16. The Ministry of the Environment has stated that Protective Forests are not within the National System of Protected Areas. This does not prevent them from guaranteeing their recognized rights to exist, to their maintenance, regeneration of their vital cycles, structure, functions, evolutionary processes and their restoration. Likewise, it does not mean that they do not enjoy a protection category approved by Law and by each Ministerial agreement that declares a forest under this category. A Protected Forest is a Forest under a protection category approved by Law in the COA currently and in the previous Forestry, Natural Areas and Wildlife Law.
- 3.17. Therefore, we respectfully ask this Court to restore the rule of law violated and correct the manifest error of the Ministry of the Environment and guarantee the effectiveness of the rights of the country's forests. Thus, we respectfully request this Court to order the Ministry of the Environment that when mining projects may directly or indirectly affect protective forests, an environmental license is required and not a mere automatic registration made by a computer system.
- 3.18. There are examples of cases in which the Courts of Ecuador protect the rights of nature that are being violated. An example of this is the victory of nature in the Protection Action for Violation of the Rights of the Río Blanco issued by the Provincial Court of Pichincha[9]. In this case, the owners of a property located in Tabacundo, Pichincha, obtained an artisanal mining concession for the exploitation of stone materials, they began to carry out these activities without having the respective environmental license, which was causing the landslide of materials in the River Granobles (Río Blanco), causing its affectation. Faced with this situation, two individuals presented a protection action, in January 2013, for the alleged violation of the rights of the Blanco River and for the threat of violation of the right to water; In the action they also requested precautionary measures, specifically: the eviction and removal of the machinery, dump trucks and other tools found on the site; the immediate suspension of the quarry exploitation activity until the resolution of the action. Upon qualifying the claim, these measures were accepted and the quarry's exploitation activities were ordered to be suspended. In order to pass judgment of first instance, several considerations are made: a) All rights are fully justiciable and equally hierarchical; b) The reversal of the burden of proof in cases of environmental damage was assimilated with an affirmative action or special condition for the exercise of rights; c) The principle in *dubio pro natura* was accepted, establishing that it must inform the judge's decision in favor of nature when there are doubts; d) The precautionary principle was taken, stating that when there is a threat to nature, exhaustive studies should not be expected to take measures to avoid damage; e) A weighting was made between the right to work of the defendants and the request for definitive suspension of the activity, requested in the lawsuit, deciding that the provisional suspension until the necessary measures are taken to ensure the minimum environmental impact; Furthermore, reference is made to the importance of the Blanco River as it is a source of supply of drinking and irrigation water for the nearby population, as well as the aquatic life that must be protected. In ruling, it was resolved to partially accept the action and the temporary suspension of

mining activities was ordered until the corresponding environmental license is obtained; Furthermore, a study of the water of the Blanco River is ordered to be carried out in order to carry out the corresponding remediation processes. The first instance decision was appealed by the defendants, the Court deciding to deny the appeal and ratify the first instance decision basing the decision on the priority regime for the protection of natural elements and the rights of nature, the precautionary principle, the regulatory regime on environmental licensing, the right to live in a healthy environment, and reversal of the burden of proof.

- 3.19. In the same way, we ask this Court to guarantee the rights of the forests recognized in the Constitution of the Republic, and to rule in accordance with the best interests of the forest, considering its intrinsic value. And, consequently, that mining projects are not carried out in these ecosystems unless the highest environmental standards are applied that guarantee their conservation.

### **III. THE RIVERS OF THE PROTECTIVE FOREST LOS CEDROS ARE LIVING ENTITIES SUBJECT OF RIGHTS AND THEIR INTRINSIC RIGHTS MUST BE GUARANTEED**

- 3.20. The montane forests of Ecuador, such as the Los Cedros protective forest, are particularly important for the water cycle in a much larger area than they cover, due to the capture of water through their high diversity of epiphytic plants, such as ferns, bromeliads, and orchids that live on trees. These epiphytes absorb water from the fog, helping these forests capture up to 75% additional water through the fog, allowing cloud forests to maintain a constant flow downstream during dry spells.
- 3.21. Three rivers are born in the Los Cedros protective forest: the Manduriacu River, the Verde River and the Los Cedros River, in addition to encompassing the south bank of the Magdalena River. These rivers supply water to people downstream, and are home to an incredible biodiversity of life. Keeping these rivers protected and clean for those who live downstream was one of the main objectives for the creation and legal recognition of the Los Cedros Protective Forest through the INEFAN resolution published in Official Gazette No. 620, dated January 26, nineteen ninety five.
- 3.22. As the Multicompetent Chamber of the Provincial Court of Imbabura was able to verify, the environmental registry that gave viability to the Río Magdalena Mining Project in the initial exploration phase in medium and large mining (metallic and non-metallic), located within the Los Cedros Protective Forest; It constitutes a certain threat to the life and health of the Manduriacu, Los Cedros, Verde and Magdalena rivers from its source and throughout its course. This is how the Environmental Impact Study of the Concesión Minera Río Magdalena project describes it on page 5, as one of its main environmental impacts on the Los Cedros protective forest is anticipated contamination of water and local sources. Faced with this, the Ecuadorian state has the legal responsibility to ensure the rights expressly recognized by the Constitution of Ecuador to nature and rivers. To illustrate your office, these rights have already been expressly recognized by national and comparative law courts, as we describe below.



- 3.23. As we have already pointed out, the Political Constitution of the Republic of Ecuador introduced in its articles 71, 72, 73 and 74, recognizing that nature has the right to exist, to maintain it, regenerate its life cycles, structure, functions, evolutionary processes and its restoration. These rights have been recognized in favor of the river in the Ecuadorian Courts. Consequently, rivers are living beings subject to rights under the Ecuadorian Constitution and the state must respect, guarantee and protect the validity of these rights.
- 3.24. The Republic of Ecuador has important and outstanding jurisprudence in protection of the law of the land and rivers, as subjects of rights. One of the most emblematic and internationally commented decisions was the first decision that ruled in favor of the rights of nature in 2011, in which the Provincial Court of Loja accepts the Protection Action for Violation of the Rights of Nature regarding the Vilcabamba River [10]. In 2008, the Provincial Government of Loja began expansion work on the Vilcabamba-Quinara road, however, the corresponding environmental impact studies were not available and the rubble and excavation material were being thrown directly into the Vilcabamba River. As a result of these works, the riverbed was affected, causing floods that had never occurred before. In December 2010 two foreigners presented for the first time a protection action "in favor of Nature, particularly in favor of the Vilcabamba River" and against the Provincial Government of Loja. In the second instance, it was resolved by accepting the appeal and declaring that the rights of nature had been violated. Finally, the courts concluded that there is no collision of constitutional rights, between the need to widen the highway and the rights of nature, but that this work is only required to be carried out respecting the rights of nature and complying with the environmental regulations. The judgment established the following obligations: (i) that it comply with the recommendations for corrective actions that the Ministry of the Environment has carried out with respect to the work; in case of not complying with them, it is advised to suspend the work; (ii) to offer public apologies for starting a work without having the corresponding environmental impact study. As an additional measure, monitoring of compliance with the judgment was delegated to the Provincial Directorate of the Ministry of the Environment and the Provincial Directorate of the Ombudsman's Office.
- 3.25. The regulations and comparative jurisprudence have also recognized a series of rivers as subjects of rights. In Colombia, the Constitutional Court of Colombia (Sixth Review Chamber, T-622 of 2016) "Recognize the Atrato River, its basin and tributaries as an entity subject to rights to protection, conservation, maintenance and restoration by the State and ethnic communities [...], the Court will order the national government to exercise legal guardianship and representation of the rights of the River (through the institution designated by the President of the Republic, which could well be the Ministry of the Environment) together with the ethnic communities that inhabit the Atrato River basin in Chocó; in this way, the Atrato River and its basin -from now on- will be represented by a member of the activating communities and a delegate from the Colombian Government, who will be the guardians of the River [...]. "[eleven]

- 3.26. In India, the courts have also taken significant steps in recognizing and protecting the rights of nature. The Supreme Court of Uttarakhand in India granted legal status to the Ganges and Yamuna Rivers[12]. The same Supreme Court of Uttarakhand, just a few days later in another case stated: “Rivers, forests, lakes, watercourses, air, glaciers and springs have the right to exist, persist, maintain, maintain and regenerate their own system of ecology. vital. Rivers are not just waterways. They are scientifically and biologically alive. Rivers, forests, lakes, bodies of water, air, glaciers, human life are unified and are indivisible as a whole. It is necessary to maintain the integrity of the rivers from the glaciers to the ocean ”. (Own highlight). [13]
- 3.27. On the other hand, in New Zealand, the legislative path was chosen, recognizing the Whanganui River as legal entities[14]. In 2017, the New Zealand Parliament approved a treaty that recognizes the Whanganui River as a “legal entity”, to which health should be restored as its right. This treaty, the first in the world to grant legal personality to a river, concludes a 150-year effort by the Maori people to grant legal recognition to the river as their ancestor. The Whanganui Iwi consider the Te Awa Tupua River inseparable from the living mountains and the sea, and endow it with great cultural and religious importance. The treaty allows the courts to appoint the guardians of the river and considers that any damage that can be done to it is indistinguishable from an injury suffered by the Iwi. The Iwi believe that this treaty solves traditional river ownership problems and designed it to restore the health of the river and the surrounding ecosystem. The law appointed guardians for the Whanganui River who are legally responsible for representing the interests of the river in decision-making, disputes; including “promoting and protecting the health and well-being” of the river and acting in its interests.
- 3.28. The cases presented provide important elements for the analysis of the matter; Without a doubt, the case of PB Los Cedros constitutes a new opportunity for the Republic of Ecuador to reaffirm the validity of its Constitution and the protection of the rights of Pacha Mama; through the express recognition of the rights inherent to the Verde, Manduriaco and Los Cedros rivers; that are born and depend on the ecosystems of the Forest Protector Los Cedros.
- 3.29. In 1999 the philosopher Thomas Berry, one of the great promoters of the Law of the Land and the rights of nature, in his 10 jurisprudential principles pointed out that Each component of the earth community has 3 rights, to exist, to remain and the right to develop their role in a constant renewal of the processes of the terrestrial community. It continues, that the rights of each natural entity vary with the species or the specific role of those species, thus rivers have rights to rivers, birds have rights to birds, insects have rights to insects and humans have rights. humans, and establishes that the difference is qualitative and not quantitative. [15]
- 3.30. What Berry tells us is not at all unreasonable if we look at the specification of human rights. The explicit declaration of the fundamental rights of rivers through the judicial ruling recognizing a catalog of specific minimum rights of rivers is essential for the advancement of river rights.

- 3.31 The Universal Declaration of the Rights of Rivers promoted by Earth Law Center has identified the following rights as an intrinsic right of rivers: (1) The right to flow; (2) The right to exercise their essential functions with the ecosystem; (3) The right to be free from all contamination; (4) The right to feed and be fed by its tributaries; (5) The right to native biodiversity; and (6) The right to restoration. In addition, it is added that “each river will have the right to the independent appointment of one or more legal guardians, who act solely on behalf of the river's rights, with at least one legal guardian as the indigenous representative of those rivers on which the indigenous communities depend. . ” [16]
- 3.32. Rivers are also sources of fresh water through which the population is served to satisfy its domestic, agricultural, agricultural, industrial and recreational needs. The welfare of the river is the welfare of the population. A river free of pollution allows the necessary budget to satisfy the right to life, to health, to water, to food sovereignty, to a healthy environment of the population to which they supply, this is an impossible dimension to avoid .
- 3.33. The constitution of Ecuador in its article 318 is clear in establishing:
- 3.34. Water is a strategic national heritage for public use, an inalienable and imprescriptible domain of the State, and constitutes a vital element for nature and for the existence of human beings. The privatization of water is completely prohibited. Water management will be exclusively public or community [...] The State, through the sole water authority, will be directly responsible for the planning and management of water resources that will be used for human consumption, irrigation that guarantees food sovereignty , ecological flow and productive activities, in this order of priority [...]
- 3.35. Likewise, the Organic Law of Water Resources, Uses and Use of Water Establishes in its article 57 and following:

*Article 57. The human right to water is the right of all people to have clean, sufficient, healthy, acceptable, accessible and affordable water for personal and domestic use in quantity, quality, continuity and coverage [...] The human right water is fundamental and inalienable. No person can be deprived and excluded or deprived of this right. The exercise of the human right to water will be sustainable, so that it can be exercised by future generations. The Single Water Authority will define quality water reserves for human consumption by present and future generations and will be responsible for the implementation of policies related to the effectiveness of the human right to water.*

Article 58.- Enforceability of the human right to water. Individuals, communities, towns, nationalities, groups and communes may demand from the corresponding authorities the fulfillment and observance of the human right to water, which will address their requests as a priority and

progressively. Authorities that fail to exercise this right will be subject to sanction in accordance with the law.

Article 60.- Free access and use of water. The human right to water implies free access and use of surface or underground water for human consumption, as long as it is not diverted from its channel or *discharges discharges or there is an alteration in its quality or a significant decrease in its quantity* or rights are not affected. third parties and in accordance with the limits and parameters established by the National Environmental Authority and the Single Water Authority. The Single Water Authority will maintain a record of the use of groundwater for human consumption

- 3.36. By virtue of the aforementioned, in order to guarantee the autonomous and intrinsic right of rivers as well as the human right of access to water, it will be respectfully requested in this act to declare the Manduriacu rivers, the Verde river, the Los Cedros river and Magdalena River as a subject of rights and that it not only recognizes its existence, its maintenance, regeneration of its vital cycles, structure, functions, evolutionary processes and its restoration, but also its inherent fundamental rights as a river, which are: (1 ) The right to flow; (2) The right to exercise their essential functions with the ecosystem; (3) The right to be free from all contamination; (4) The right to feed and be fed by its tributaries; (5) The right to native biodiversity; (6) right to be restored and (7) right to be represented.

#### **IV. RIGHT TO RESTORATION**

- 3.37. In this case, special attention must be paid to the right of natural entities to be restored. The Constitution of the Republic of Ecuador establishes the right to restoration of nature in article 72. In this article, it grants the natural world a right to restoration. independent of the right to compensation of humans. Relief must return to the injured party, nature, regardless of whether the damage is also caused to humans.
- 3.38. Article 396 of the Constitution links this right with the objective responsibility to restore, as its second paragraph explains:

“[...] liability for environmental damage is objective. Any damage to the environment, in addition to the corresponding sanctions, will also imply the obligation to fully restore ecosystems and compensate the affected people and communities. Each of the actors in the processes of production, distribution, marketing and use of goods or services will assume direct responsibility for preventing any environmental impact, for mitigating and repairing the damage it has caused, and for maintaining a permanent environmental control system. Legal actions to prosecute and punish for environmental damage will be imprescriptible. ”

3.39. Strict liability seeks to establish who caused the damage as responsible for the restoration to nature, even when these have been caused by a lawful activity.

3.40. For its part, the Organic Environmental Code in article 11, establishes the following:

“In accordance with the environmental principles and guarantees established in the Constitution, every natural or legal person that causes environmental damage will have strict liability, even if there is no intent, fault or negligence. The operators of the works, projects or activities must maintain a permanent environmental control system and implement all the necessary measures to prevent and avoid environmental damage, especially in the activities that generate the greatest risk of causing them. ”

3.41. The Los Cedros protective forest enjoys the right to ecological restoration thanks to the Ecuadorian constitution and the Environmental Organic Code, and the Ecuadorian State is not exempt from the responsibilities of either of the two documents. It has the mandate to restore immediately and subsidiarily as established in article 397 of the Constitution, which states that:

“In case of environmental damage, the State will act immediately and subsidiary to guarantee the health and restoration of the ecosystems. In addition to the corresponding sanction, the State will repeat against the operator of the activity that caused the damage the obligations that the integral reparation entails, under the conditions and with the procedures established by law. The responsibility will also fall on the servants or servers responsible for carrying out environmental control. ”

3.42. The most important thing in this article is the spirit of the constituent assembly members not to leave nature unprotected and to guarantee the immediacy and validity of its right to be restored despite the fact that those who caused the damage do not initiate their restoration, nor do they respond immediately. For having violated the right of the forest to the precautionary principle, the Ecuadorian State has to restore as soon as possible the danger that it has illegally created for Los Cedros.

3.43. Ecuadorian jurisprudence recognizes the right to restoration, as shown by judgment n ° 218-15-SEP-CC issued in case n ° 1281-12-EP. The court says that:

“Due to the systematic interpretation of constitutional rights - those of nature - as determined by the Constitution of the Republic, therefore, it has the right to restoration, and in application of articles 396 and 397 of the Fundamental Norm,

the State must initiate legal actions against those responsible in order to return the nature affected by this activity, to a state that allows an adequate functioning of the natural system. "

3.44. Applying the rule of this judgment to this case, the Ministry of the Environment must ensure the validity of the constitutional rights violated by having issued the environmental registry ENAMI, and must proceed with the repair of the constitutional right of the nature that was violated.

3.45. Also, Judgment No. 09171-2015-0004 confirmed the State's duty to establish mechanisms to achieve the restoration of damage to nature and the adoption of mechanisms to mitigate the harmful consequences of the protection of nature and species. In response to a 2009 civil lawsuit by community members whose rights were violated by the industrial agricultural operations of the PRONACA company, the Civil Court 19 of the province of Pichincha not only recognized the rights of people to a clean environment and healthy, but also recognized people's rights. nature must be restored to its ecological condition as it existed before agricultural activity.

3.46. Colombia, through its Constitutional Court, has also recognized the right to the restoration of nature. Likewise, the Court ordered the National Government to exercise legal guardianship and representation of the rights of the Atrato River in conjunction with the ethnic communities that inhabit the Atrato River basin in Chocó; In this way, the Atrato River and its basin-henceforth- will be represented by a member of the activating communities and a delegate from the Colombian Government, who will be the guardians of the River. This experience is a guide to what this Court is called to declare, for the benefit of Los Cedros.

3.47. Issuing restoration orders, in many countries, has become a way of guaranteeing the rights of human beings, nature and the application of national laws and regulations. Comparative law and its jurisprudence demonstrate the importance of guiding legislatively and jurisprudently the recognition of environmental components as subject of rights towards a model legal order that respects the law of the land with an ecocentric perspective, for which we respectfully invite this Court to adopt it in the resolution of this case. Therefore, we ask the Court to guarantee that the right to restoration of nature is respected, through specific orders that allow the right of the Los Cedros protective forest to be effective.

## **V. RIGHT TO REPRESENTATION. GUARDIANS OF THE PROTECTIVE FOREST LOS CEDROS AND ITS RIVERS**

3.48. Natural entities do not have their own voice, so it is necessary to establish the institution called Guardians in comparative law to enforce the rights of recognized natural entities, it must have a specific institutionality that is its visible face and represents them with autonomy.

3.49. The representation of natural entities is also a fundamental right, as has been recognized by comparative law. For example, the Colombian State through the sentences of the Atrato River and the Colombian Amazon. The same happens with comparative legislation such as New Zealand, Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017 and Te Urewera Act 2014 where the Whanganui River is declared as a subject of rights and the appointment and appointment are regulated, among other things. guardian duties. The same is true for Te Urewera National Park. And the same path follows the sentence that declares the Ganges River, in India, as a living entity subject to rights, in which the establishment of the guardians is also ordered.<sup>[17]</sup>

3.50. In Ecuador, the General Code of Organic Processes of Ecuador of 2015 entrusts the Ombudsman's Office to represent the interests of nature and defend their rights. Articles 38-39 of the General Organic Code of Processes of 2015 establish:

Nature can be represented by any natural or legal person, the community or the national Ombudsman, who can also act on his own initiative. Nature cannot be sued in court or reprimanded. The Ombudsman will respond in accordance with the law and with this Code. Actions for environmental damage and damage caused to people or their property as a result of this will be exercised separately and independently. Corrective and remedial measures for environmental damage, as well as their implementation, will be submitted to the approval of the National Environmental Authority [Ministry of the Environment]. In cases where such measures do not exist, a judge will order them. The Ombudsman's Office is a valuable ally in the effective implementation of the Rights of Nature, in accordance with the Constitution.

3.51. In the same sense, the Constitution in subsection 2 and third of article 71, establishes that “every person, community, people or nationality may demand that the public authority comply with the rights of nature.

3.52. The popular representation of nature can be an effective a posteriori mechanism for restoring the right, when the rights of natural entities have already been violated. However, to ensure the validity of the rights of natural entities, a collegiate and representative body is essential whose main mission is to act on their behalf and representation, which is the visible human face of the forest and its ecosystem, having as its main purpose defend, promote and protect your health and well-being from the river. For this, it is necessary that this Court recognize the right of the Bosque Protector los Cedros to be represented and invest this institution with full technical, economic and legal capacity to achieve its objectives and that it recognize all the powers that are reasonably necessary to exercise its functions. , duties and obligations.

3.53. Guardians must be given a budget to perform their duties. They must be recognized as the human face of the forest and its associated ecosystem, they must have

the power to represent the forest before the courts or other public or private body where they must represent the best interests of the forest unrelated to its usefulness for the human being. Likewise, they must be given the power to promote and defend the rights, well-being and health of the forest and its ecosystem. In addition, powers must be established to develop its management plan and have the power of participation and decision in acts, projections or programs that may directly or indirectly affect the forest and in any other process relevant to the forest.

- 3.54. For the foregoing, this Court is respectfully requested not only to include in this process the Ombudsman of the Republic of Ecuador to act on behalf of nature as a subject of rights, in accordance with his powers recognized by law, but also also order the creation of an autonomous body that acts on behalf of the forest, its ecosystem and associated rivers, ensuring the promotion of what is good for the forest and the rivers themselves, their health and well-being, detached from their relationship with the human beings, having as a fundamental principle the best interests of the forest and the respect and guarantee of their fundamental rights.

#### **4. APPLICATION OF THE PRECAUTIONARY PRINCIPLE**

- 4.1 The approval of the mining project in a protective forest omits the precautionary principle established in the Constitution of the Republic of Ecuador, which firmly declares the importance of applying the precautionary principle to all cases that carry the risk of environmental impacts. Article 73 says that the State "will apply precautionary and restriction measures for activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles."
- 4.2 Likewise, Article 395, number 4, says that "[i]n case of doubt about the scope of the legal provisions on environmental matters, they will be applied in the most favorable sense to the protection of nature." Underlining this mandate, Article 396 maintains that "[i]n case of doubt about the environmental impact of any action or omission, even if there is no scientific evidence of the damage, the State will adopt effective and timely protective measures." This precautionary principle cannot be separated from the entire system of approval of impact studies or environmental records granted by the Ministry of the Environment. Again, we are left to wonder why the precautionary principle was not applied to protect a Los Cedros Protected Forest.
- 4.3 In this case, it is clear that the State has not taken into consideration the incontrovertible evidence that the "Magdalena 01" and "Magdalena 02" concessions to the National Mining Company (ENAMI) are largely within the Los Cedros Protective Forest, and that the proposed mining project would significantly damage biodiversity and the fragile and complex ecosystems of the protective forest. The State violated its duty to apply the precautionary principle in the process of granting environmental records under the Constitution of the Republic of Ecuador. The cadastral report of the "Magdalena 01" and "Magdalena 02" concessions that accompanied the environmental registry recognizes that the requested area was found overlapped by a protected area - the Los Cedros



Protective Forest. In addition, the Environmental Management Directorate of the Municipal GAD of Santa Ana de Cotacachi concluded from its inspection of the site that the mining project would inflict serious damage on the protective forest. A technician from the municipality and an environment, hygiene, and health specialist from GADMSAC also reported that there were tracks of an Andean bear or spectacled bear, a species of great importance for the conservation of other plant species that is listed as being in danger of extinction.

4.4 Despite this abundant information on the value of Los Cedros and the great risks posed by the extractive activity requested by ENAMI to the flora and fauna of this area, the Ministry of Mining granted the concession of metallic minerals "Río Magdalena 01" in favor of ENAMI on March 3, 2017, and the Minister of the Environment granted the environmental registry on December 12, 2017. The government extended permission to the Río Magdalena Mining Project in the initial exploration phase in mining within the protected area Bosque Protector Los Cedars, regardless of the perpetration of the constitutional principles that correspond to exercise the State or the violation of the rights of nature and the general public. The reason why an environmental registration is required by the Ministry of the Environment, in accordance with an environmental impact study, as a requirement before undertaking activities that involve an environmental impact is so that the government can ensure that the rights of all persons are respected. subjects possibly affected by a requested project. Los Cedros forest is home to a great biodiversity with more than 350 species of birds, 180 species of orchids, 600 species of moths, and is the refuge of the last populations of the brown-headed spider monkey, which is in a critical state of conservation. This level of biodiversity requires both a high level of precaution and a strong right to restoration, as we explain below. Having approved the impact study and the environmental management plan of ENAMI, even with the benefit of the technical and specialized reports of the project, amounts to a reckless abandonment of governmental responsibility and the violation of the Constitution of Ecuador.

4.5 As we have shown, Ecuador constitutionally recognizes the rights of nature, and its jurisprudence has expressly applied the reversal of the burden of proof principles, the in dubio pro-natura principle and the precautionary principle. The Protection Action for Violation of the Rights of the Blanco River issued by the Provincial Court of Pichincha is a clear example of this application. The precautionary principle was taken, stating that when there is a threat to nature, exhaustive studies should not be expected to take measures to avoid damage.

4.6 The customary nature of the precautionary principle as a norm in international law is evidenced in multiple legal instruments that apply directly to this case, including the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Convention on Stockholm on Persistent Organic Pollutants, and others. normative instruments that observe the precautionary principle as the maximum reference to guarantee the protection of nature and the environment when there is no scientific certainty of environmental damage. Article 15 of the Rio Declaration on Environment and Development recognizes the precautionary principle and defines it as follows: "When there is a danger of serious or irreversible damage, the lack of absolute

scientific certainty should not be used as a reason to postpone the adoption of cost-effective measures to prevent environmental degradation. " In this same sense, the Inter-American Court of Human Rights (IACHR), in Advisory Opinion OC-23/17 of November 15, 2017, declares that States must act in accordance with the precautionary principle against possible serious or irreversible damage to the environment, even in the absence of scientific certainty. The Court pointed out that as "it is frequently not possible to restore the situation that existed before the occurrence of environmental damage, prevention should be the main policy regarding the protection of the environment." It also observed that "[d]iverse member states of the OAS, through their internal regulations and the jurisprudence of its highest courts, have incorporated the precautionary principle [.]” Including Antigua and Barbuda, Argentina, Canada, Colombia, Cuba, Ecuador, Mexico, Peru, the Dominican Republic and Uruguay.

- 4.7 Along these lines, the Constitutional Court of Colombia explains the following: "The precautionary principle stands as a legal tool of great importance, as it responds to the technical and scientific uncertainty that often hangs over environmental issues, due to the incommensurability of some polluting factors, due to the lack of adequate measurement systems or the fading of damage over time. "[18] However, based on the fact that certain effects are irreversible, this principle indicates a course of action that" not only addresses in its exercise to the consequences of the acts, but mainly requires an active anticipation stance, with an objective of forecasting the future environmental situation in order to optimize the natural living environment. That is, based on the existing uncertainty regarding the effective environmental damage that will occur in the Los Cedros protective forest due to the granting of the mining concession, pending n to optimize environmental protection, it is necessary to take effective measures to guarantee the protection of said ecosystem.
- 4.8 In addition, the ultimate purpose of the declaration of a protective forest is precisely to guarantee the conservation of the existing biodiversity in said area, for which the protection and conservation of this Protective Forest should be taken care of immediately. In this sense, it should be noted that the Ministry of the Environment is the state institution in charge of environmental policy in Ecuador and is the authority that must undertake the mechanisms, actions, among others, that allow effective protection and guardianship when damage occurs to the environment. environment and nature. Thus, the non-application of this precautionary principle at the time of granting said concessions implies the responsibility of omission on the part of the environmental authority.
- 4.9 Ecuadorian jurisprudence can enlighten the Court in this case on the precautionary principle applicable in comparative environmental law regarding the adequate realization of the rights of nature, compliance with international treaties signed and ratified by Ecuador, the mandates of the I / A Court HR, and respect for the Ecuadorian constitution and legislation in terms of its obligations regarding the environment and human rights. We highlight the importance of the judgments and the application of the principles of the reversal of the burden of proof, the principle in dubio pro-natura and the precautionary principle.

## **5. RIGHT TO CITIZEN CONSULTATION**

5.1 The Constitution of the Republic of Ecuador in its art. 1 states that:

“Ecuador is a constitutional State of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular. It is organized in the form of a republic and is governed in a decentralized manner. Sovereignty resides in the people, whose will is the foundation of authority, and is exercised through the organs of public power and the forms of direct participation provided for in the Constitution. The non-renewable natural resources of the territory of the State belong to its inalienable, inalienable and imprescriptible patrimony. [...] ”

5.2 In particular, as a mechanism for participation and expression of citizen will, the Constitution of the Republic of Ecuador recognizes the right to prior consultation in Articles 398 (Citizen Consultation) and 57.7 (Prior, Free and Informed Consultation).

5.3 For its part, article 398 of the Constitution establishes:

*“Any decision or state authorization that may affect the environment must be consulted with the community, which will be informed widely and in a timely manner. The consulting subject will be the State. The law will regulate the prior consultation, citizen participation, the deadlines, the subject consulted and the evaluation and objection criteria on the activity submitted for consultation. The State will assess the opinion of the community according to the criteria established in the law and international human rights instruments. If the aforementioned consultation process results in a majority opposition from the respective community, the decision to execute the project or not will be adopted by a duly motivated resolution of the corresponding higher administrative instance in accordance with the law ”.* In this case, the decision or state authorization is the environmental registry, since it is an administrative decision issued by the Environmental Authority and that should have been previously consulted with the affected communities.

5.4 Article 57 of the Constitution of the Republic of Ecuador refers to collective rights and establishes that “Indigenous communes, communities, peoples and nationalities are recognized and guaranteed, in accordance with the Constitution and with the pacts, agreements, declarations and other international human rights instruments, the following collective rights. [...]”, establishing in its numeral 7:

“The prior, free and informed consultation, within a reasonable time, on plans and programs for the prospecting, exploitation and commercialization of non-renewable resources that are on their lands and that may affect them environmentally or culturally; participate in the benefits that these projects report and receive compensation for the social, cultural and environmental damage caused to them. The consultation to be carried out by the competent authorities will be mandatory and timely. If the consent of the consulted community is not obtained, it will proceed in accordance with the Constitution and the law. ”

In the case in question, this refers to the citizen consultation since, according to the first instance ruling, there are no indigenous peoples whose rights have been violated in the damages to the Los Cedros Forest.

5.5 In addition, we once again cite article 11 of the Constitution, which is clear about the direct application of rights and the need for no regulation to limit these rights, when it states:

The exercise of rights will be governed by the following principles:

3. The rights and guarantees established in the Constitution and in international human rights instruments shall be of direct and immediate application by and before any public, administrative or judicial servant, ex officio or at the request of a party.

For the exercise of constitutional rights and guarantees, conditions or requirements that are not established in the Constitution or the law will not be demanded.

The rights will be fully justiciable. A lack of legal norm may not be alleged to justify its violation or ignorance, to dismiss the action for those facts or to deny its recognition.

4. No legal norm may restrict the content of the rights or constitutional guarantees [...].

5.6 Environmental consultation is an expression of the right to participate in environmental matters, established at the international level in Principle 10 of the Rio Declaration, which establishes that “the best way to deal with environmental issues is with the participation of all interested citizens. , at the appropriate level. At the national level, everyone should have adequate access to information on the environment available to public authorities, including information on materials and activities that pose a danger in

their communities, as well as the opportunity to participate in the processes. decision-making. States should facilitate and promote awareness and participation of the population by making information available to all. Effective access must be provided to judicial and administrative procedures, including compensation for damages and pertinent remedies ”. This principle is finalized to guarantee that every person can have access to adequate information, participate in decision-making and access justice in environmental matters, with the ultimate objective of ensuring the right of present and future generations to an environment. healthy and sustainable.

5.7 In fact, number 3 of art. 398 of the CRE enters the broader context of art. 395, which establishes that “The Constitution recognizes the following environmental principles:“ The State will guarantee the active and permanent participation of the affected individuals, communities, peoples and nationalities in the planning, execution and control of all activities that generate environmental impacts. ”

5.8 In the present case, according to what is deduced from the Resolution by which the Minister of the Environment granted the Mining Registry in favor of the National Mining Company (ENAMIEP), neither the population itself nor the inhabitants of the communes of the parish of García Moreno, who are settled in the area of direct and indirect influence of the Río Magdalena 01 and Río Magdalena 02 mining concessions, nor the population of the Intag Zone and the Cotacachque canton, were consulted prior to the granting of the environmental registry to determine whether the mining project was viable or not.

5.9 In 2010, the Constitutional Court of Ecuador, in its ruling No. 001-10-SIN-CC, on the Unconstitutionality of the Mining Law, resolved the literal b of numeral 3 that: “Any mining activity that is intended to be carried out in the territories (with emphasis) of the indigenous, Afro-Ecuadorian and Montubia communities, peoples and nationalities, in all its phases (with emphasis), as of the publication of this judgment, it must undergo the prior consultation process established in article 57, numeral 7 of the Constitution, in accordance with the rules established by this Court (with emphasis), until the National Assembly issues the corresponding law ”. As of the publication of the ruling of the Constitutional Court in Official Gazette No. 176 of April 21, 2010, the Ecuadorian State is obliged to carry out prior, free and informed consultation in accordance with the parameters contained and developed in this judgment, as well as, in the parameters and international treaties of Human Rights.

5.10 The Inter-American Court of Human Rights, in its Advisory Opinion Oc-23/17, of November 15, 2017, requested by the Republic of Colombia Environment and Human Rights, the Inter-American Court regarding the right to Environmental Consultation indicated that all People have the right to participate in decision-making in projects or activities that may affect the environment because they would undermine other rights such as life, among others. The Inter-American Court pointed out that public participation is important to exercise democratic control of state efforts and thus they can question, inquire and consider the fulfillment of public functions, through the application of the principles of publicity and transparency and, above all, must be supported by access to information that allows social control through effective and responsible participation. Likewise, the

State must guarantee opportunities for effective participation from the early stages of the decision-making process and inform the public about these opportunities for participation. He also pointed out that the State must ensure that the members of the people are aware of the possible risks, including environmental and health risks, so that they can comment on any project that may affect their territory within a consultation process with knowledge and form. voluntary. Therefore, the State must generate channels of sustained, effective and reliable dialogue.

5.11 With regard to environmental issues, participation represents a mechanism to integrate the concerns and knowledge of citizens in public policy decisions that affect the environment. Likewise, participation in decision-making increases the capacity of governments to respond to public concerns and demands in a timely manner, build consensus, and improve acceptance and compliance with environmental decisions.

5.12 For the foregoing, we respectfully request that this most excellent Court respect the right to citizen consultation on environmental matters and order the Ministry of Mining and the Ministry of the Environment to carry out citizen consultations before any state decision. In this case, we refer to two state decisions, in whose approval processes the consultation was omitted: 1) Ministry of Mining that granted the concession of metallic minerals "Río Magdalena 01" in favor of ENAMI on March 3, 2017; and, 2) and the Minister of the Environment who granted the Environmental Registry on December 12, 2017.

## **6. THE ECUADORIAN STATE HAS THE DUTY TO PROTECT THE ENVIRONMENT IN ORDER TO PROTECT THE NEEDS AND RIGHTS OF FUTURE GENERATIONS**

6.1 Throughout this writing we have reviewed the importance of forests regarding their role in mitigating climate change. Consequently, their protection and the guarantee of their fundamental rights is crucial in order to respond to the objectives of the United Nations Framework Convention on Climate Change established in Article 5, which states "The Parties should adopt measures to conserve and increase, as appropriate, the sinks and reservoirs of greenhouse gases referred to in article 4, paragraph 1 (d), of the Convention, including forests. " Earth Law Center understands that the respect and guarantee of the rights of nature are a fundamental aspect in order to protect and conserve the forests of the nation.

6.2 One of the fundamental dimensions about why it is absolutely essential to give an urgent response to climate change and the global environmental crisis is in view of protecting the rights to a healthy environment of future generations, in order for them to meet their own needs. and their fundamental rights can be guaranteed.

6.3 In international law, the rights of future generations have been recognized in various instruments, among which we can mention General Assembly resolution 44/228 of December 22, 1989, on the United Nations Conference on the Environment. and Development, in addition to Resolutions 43/53 of December 6, 1988, 44/207 of December 22, 1989, 45/212 of December 21, 1990, and 46/169 of December 19, 1991; all of these aimed at protecting the global climate for present and future generations. Likewise, we

can mention, the Declaration of Rio de Janeiro, also known as "Earth Summit", established in principle 3 that "The right to development must be exercised in such a way that it responds equitably to the development and environmental needs of the present and future generations "(Declaration of Rio de Janeiro, 1992). In short, there are numerous recognitions that future generations have regarding the guarantee of protection of the environment by the inhabitants of the present.

6.4 In comparative law it is possible to find antecedents of judicial decisions that consider the right of future generations. This is the case of the Colombian Supreme Court in the decision that recognizes the rights of the Colombian Amazon STC4360-2018 [19], he said; "The foundation of the obligation of direct solidarity with nature is built on a value, in itself, of it, by affinity with the knowing subject or external" object "by which it is defined, inasmuch as the human being" is part of nature "being", in turn, nature. This conception is the main essence on which the concept of intrinsic value of the environment is based: respect for oneself implies, in itself, "respect for the part of oneself that is made up of nature, and of which they will form part, in turn, future generations. "

6.5 However, one of the most famous decisions regarding the recognition of the rights of future generations took place in the Philippines where the lawyer Antonio Oposa, on behalf of his three children and 41 other children, filed a lawsuit on behalf of his generation and of those to come in defense of the right to a healthy environment, due to the deforestation of virgin forests that were being subjected to commercial exploitation. The complaint alleged that only 800,000 hectares of virgin forests remained and that they were being subjected to commercial exploitation. They also alleged that the government had already granted 92 logging licenses covering an area of 3.9 million hectares, a fact defined as a great abuse of judgment. With a deforestation rate in the country estimated at 120,000 hectares per year, the reserve of 800,000 hectares of virgin forest would completely disappear in less than ten years.[20] Therefore, there would be nothing left for the complainant children to dispose of, enjoy and benefit from when the time came. The Supreme Court of the Philippines, in which it held; "The defense of their right to a healthy environment by minors constitutes, at the same time, the fulfillment of their obligation to ensure the protection of that right for future generations and it was thus that in a case similar to the present one, recognized the legitimation of girls and boys on behalf of future generations to avoid deforestation of the island. "[21] The similarities with the case in question in this amicus invites this most excellent Court to protect the protective forest, the cedars, its ecosystem and rivers.

6.6 Likewise, the same Constitution of the Republic of Ecuador expressly recognizes the right to future generations in article 395 in a number 1 which indicates

The Constitution recognizes the following environmental principles:

1. The State shall guarantee a sustainable development model, environmentally balanced and respectful of cultural diversity, which conserves biodiversity and the natural regeneration

capacity of ecosystems, and *ensures the satisfaction of the needs of present and future generations.*

6.7 In view of the foregoing, this Court is asked to consider protecting the Los Cedros protective forest and its ecosystem in order to safeguard the right of future generations to a healthy environment and effective access to and enjoyment of human rights.

## 7. REQUESTS

7.1 Due to the foregoing, the signatories of this amicus curiae, most respectfully request that Excellent Court, within the framework of international treaties, the Constitution and laws of the Republic of Ecuador:

1. The rights of nature be guaranteed, these are: right to the existence, maintenance and regeneration of their vital cycles, structure, functions and evolutionary processes of the Los Cedros protective forest and the Manduriacu, Verde, Los Cedros and Magdalena rivers as established by art. 71 of the Ecuadorian Constitution.

2. That with respect to the Manduriacu, Verde, Los Cedros and Magdalena rivers, a mechanism be recognized and established to guarantee and respect the specific fundamental rights: (1) The right to flow, (2) The right to exercise their essential functions with the ecosystem, (3) The right to be free from all contamination, (4) The right to feed and be fed by its tributaries, (5) The right to native biodiversity, and (6) The right to restoration.

3. The right to restoration of the Los Cedros protective forest is guaranteed by requiring ENAMI to proceed with the immediate restoration of the forest, closure of the open roads and repair of all damage done to the protective forest, thus respecting article 72 of the Constitution. of the Republic of Ecuador.

4. Order, to the respective authority, the creation of an autonomous body that acts on behalf of the forest, its ecosystem and associated rivers, ensuring the promotion of what is good for the forest and the rivers themselves, their health and their well-being detached of their relationship with human beings, having as a fundamental principle the best interests of the forest and the respect and guarantee of their fundamental rights.

5. The Ministry of the Environment is ordered to protect the rights of nature, apply the precautionary principle demanding the granting of environmental licenses and not only environmental records for mining operations within protective forests. And the Ministry of the Environment is also ordered to reform all the secondary regulations that are required, as well as the computer system called the Unique Environmental Information System, SUIA, since the rights are directly applicable and no regulation should hinder its application. This is mandated by article 11, numeral 3 and 4 of the Ecuadorian Constitution.



6. Respect for the citizen consultation established in article 398 of the Constitution of the Republic of Ecuador regarding two of the state decisions taken without any consultation process is guaranteed. These decisions are: 1) Ministry of Mining that granted the concession of metallic minerals “Río Magdalena 01” in favor of ENAMI on March 3, 2017; and, 2) and the Minister of the Environment who granted the Environmental Registry on December 12, 2017.

**Signed,**

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## ANNEXES

1. Letter from Scientists to the Constitutional Court of Ecuador. "Legal case on the Rights of Nature in Ecuador could set a world precedent for forests during this climate and biodiversity emergency."
2. Letter from Dr. Mika Peck, Senior Lecturer in Biology, School of Life Sciences, University of Sussex. " The Brown-headed Spider Monkey: Nature's "Ambassador".
3. David F. Díaz Fernández, KBA Corregional Focal Point for Latin America and the Caribbean. Los Cedros Protected Forest as a Key Biodiversity Area.

## **REFERENCES**

[1] Roy, BA, Zorrilla, M., Endara, L., Thomas, DC, Vandegrift, R., Rubenstein, JM, Policha, T., Rios-Touma, B. and Read, M., 2018 New mining concessions could severely decrease biodiversity and ecosystem services in Ecuador. *Tropical Conservation Science*, 11, p.1940082918780427.

[2]/[3] See <http://www.fao.org/newsroom/es/focus/2006/1000247/index.html>

[4] Marpi Ricardo, Deforestation of forests: an unstoppable process. Available at <http://www.larevistaagraria.org/sites/default/files//revista/LRA157/La%20deforestacion%20de%20los%20bosques.pdf>

[5] Cited in the effects of economic activities on Forests in the department of Chocó. Giovanni and Eva Ledesma (2007)

[6] Article 26 of the ACHR. Economic, Social and Cultural Rights. Progressive Development. The States Parties undertake to adopt measures, both internally and through international cooperation, especially economic and technical, to progressively achieve the full realization of the rights derived from economic, social, and educational, scientific and cultural norms [ ...].

[7] Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights. Article 11. Right to a Healthy Environment  
1. Everyone has the right to live in a healthy environment and to have public services basic.

2. The States Parties shall promote the protection, preservation and improvement of the environment.

[8] Inter-American Court of Human Rights, *Advisory Opinion requested by the Republic of Colombia*, OC-23/17, November 15, 2017, para. 62

[9] Judgment of the Third Chamber of Criminal Guarantees of the Provincial Court of Pichincha of July 19, 2013, *Case No. 2013-0098*. Available at <<http://www.funcionjudicial-pichincha.gob.ec/index.php>

[10] Richard Frederick Wheeler and Eleanor Geer Huddle v. Gobierno Provincial de Loja, Provincial Court of Justice of Loja, judgment 11121-2011-0010 (30 March 2011), Available online: [https://www.elaw.org/system/files/ec.wheeler.loja\\_.pdf](https://www.elaw.org/system/files/ec.wheeler.loja_.pdf)

[11] Constitutional Court of Colombia, Sixth Chamber of Review, Action for tutela del Rio Atrato, T-622 of 2016, November 10, 2016

[12] Mohd. Salim v. State of Uttarakhand & Others, High Court of Uttarakhand at Nainital, Write Petition (PIL) No. 126 of 2014 (Mar. 20, 2017). This decision has been challenged and is pending review.

[13] Lalit Miglani v. State of Uttarakhand & Others, High Court of Uttarakhand at Nainital, Writ Petition (PIL) No.140 of 2015 (March 30, 2017).

[14] New Zealand, Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

[15] Berry, Thomas. 10 jurisprudential principles. Available at: <https://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/>

[16] Earth Law Center, Universal Declaration of River Rights, [online] [https://static1.squarespace.com/static/55914fd1e4b01fb0b851a814/t/5a1f2d5e71c10b41b56e0cf3/1511992671846/Declaration+Universal+of+the+Rights+of+the+Ri%CC%81os\\_Oct+2017.pdf](https://static1.squarespace.com/static/55914fd1e4b01fb0b851a814/t/5a1f2d5e71c10b41b56e0cf3/1511992671846/Declaration+Universal+of+the+Rights+of+the+Ri%CC%81os_Oct+2017.pdf)

[17] Mohd. Salim v. State of Uttarakhand & Others, High Court of Uttarakhand at Nainital, Write Petition (PIL) No. 126 of 2014 (Mar. 20, 2017). This decision has been challenged and is pending review.

[18] Constitutional Court of Colombia, Sixth Chamber of Review, Action for tutela del Rio Atrato, T-622 of 2016, November 10, 2016, par. 7.36, p.101.

[19] Supreme Court of the Republic of Colombia, STC4360-2018, April 5, 2018.

[20] OPOSA, Antonio (1997). "The Power to Protect the Environment".

[21] Oposa et al against Facturan et al., 224 SCRA 792, 1993: 804-5